

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
05-CR-55A

TROY GILLON,

Defendant.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1)(A), on February 22, 2005. On June 16, 2006, defendant filed a motion to dismiss the indictment based on lack of jurisdiction and/or suppression of his recorded statements. The government filed a response in opposition to the motion on July 11, 2006. Defendant filed a reply thereto on July 18, 2006. The United States filed a surreply on July 28, 2006. On May 15, 2007, Magistrate Judge Schroeder filed a Report and Recommendation, recommending that defendant's motion be denied.

Defendant filed objections to the Report and Recommendation on June 18, 2007, and the government filed a response thereto on July 13, 2007. On August 29, 2007, this Court referred the matter back to Magistrate Judge Schroeder for a fact finding hearing with respect to issues addressed in the Report and Recommendation.

On March 7, 2008, Magistrate Judge Schroeder filed a Report and Recommendation, again recommending that the defendant's motion be denied. Defendant filed objections to the Report and Recommendation on March 21, 2008, and the government filed a response thereto on May 2, 2008. Counsel appeared for oral argument on the objections on June 13, 2008, but argument was not held because defendant had not been produced. The Court decided to consider the matter on the papers without oral argument and allowed the parties to file additional briefs. Additional briefing was completed on June 20, 2008.¹

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendations to which objections have been made. Upon a de novo review of the Report and Recommendations, and after reviewing the submissions, the Court adopts the proposed findings of the Report and Recommendations.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendations, the Court denies defendant's motion to dismiss and/or for suppression of evidence.

Counsel shall appear for a meeting to set a trial date on July 11, 2008, at 9:00 a.m.

On June 30, 2008, the defendant filed a document *pro se* which he denominated as an "affidavit." The "affidavit," however, is more akin to a memorandum of law. In any event, the defendant is represented by very able counsel and is not entitled to hybrid representation. Accordingly, the Court shall not consider the "affidavit."

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: July 10, 2008